UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

NOTICE OF DOCKETING

16-1639 - Huster v. Bobo

Date of docketing: February 29, 2016

Appeal from: United States District Court for the Northern District of Georgia case no. 1:14-cv-03304-ELR

Appellant(s): Phyllis A. Huster

Critical dates include:

- Date of docketing. See Fed. Cir. R. 12.
- Entry of appearance. (*Due within 14 days of the date of docketing*.) See Fed. Cir. R. 47.3.
- Certificate of interest. (*Due within 14 days of the date of docketing*.) See Fed. Cir. R. 47.4.
- Docketing Statement. (*Due within 14 days of the date of docketing, or within 30 days if the United States or its officer or agency is a party in the appeal*.) [Only in cases where all parties are represented by counsel. See the en banc order dated September 18, 2006, and guidelines available at www.cafc.uscourts.gov.]
- Requests for extensions of time. See Fed. Cir. R. 26 and 27. **N.B. Delayed requests are not favored by the court**.
- Briefs. See Fed. Cir. R. 31. **N.B. You will not receive a separate briefing schedule from the Clerk's Office**. However, in a case involving an appellant, a cross-appellant, and an appellee, a special briefing schedule is used. The appellant's opening brief is due within 60 days of the date of docketing. The cross-appellant's opening brief is due within 40 days of filing of the appellant's opening brief. The appellee's brief is due within 40 days of filing of the cross-appellant's brief. The appellant's response/reply brief is due within 40 days of filing of the appellee's brief. The cross-appellant's reply brief is due within 14 days of filing of the appellant's response/reply brief. The joint appendix is due within 10 days of filing of the cross-appellant's reply brief.
- Settlement discussions. See Fed. Cir. R. 33.
- **ORAL ARGUMENT SCHEDULE CONFLICTS:** Counsel should advise the clerk in writing within 30 days once briefing is completed of potential scheduling conflicts or as soon as they are known and should not wait until an actual conflict arises. Once scheduled, a case will not be postponed except on motion showing **compelling reasons**. See Practice Note following Fed. Cir. R. 34.

The official caption is reflected on the electronic docket under the listing of the parties and counsel. Counsel may download the Rules of Practice and required forms from www.cafc.uscourts.gov.

Daniel E. O'Toole
Clerk of Court

cc: United States District Court for the Northern District of Georgia
Bryan L. Baysinger
Charlena Thorpe

8months,APPEAL,CLOSED,ELRLC3,NeedJgm

U.S. District Court
Northern District of Georgia (Atlanta)
CIVIL DOCKET FOR CASE #: 1:14−cv−03304−ELR

Huster v. j2 Global Communications, Inc. et al
Assigned to: Judge Eleanor L. Ross
Case in other court: Illinois Northern, 1:13−cv−06143
Cause: 35:271 Patent Infringement

Date Filed: 10/15/2014
Date Terminated: 01/28/2016
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

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Date Filed	#	Page	Docket Text
08/28/2013	1		COMPLAINT filed by Phyllis A Huster; Filing fee $ 400, receipt number 0752−8680347. (Attachments: # 1 Civil Cover Sheet Form JS44, # 2 Supplement Atty Appearance for Plf)(Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 08/28/2013)
08/28/2013			CASE ASSIGNED to the Honorable Samuel Der−Yeghiayan. Designated as Magistrate Judge the Honorable Jeffrey T. Gilbert. (nsf,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 08/28/2013)
08/29/2013	2		MAILED patent report to Patent Trademark Office, Alexandria VA. (tlm) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 08/29/2013)
09/03/2013	3		EXECUTIVE COMMITTEE ORDER: It appearing that 13C 6143, Huster v. j2 Global Communications, Inc., et al., was assigned on August 28, 2013 to the calendar of the Hon. Samuel Der−Yeghiayan due to clerical error; and It appearing that the Hon. Joan H. Lefkow is presiding over MDL 2371 (12 C 6286, In Re: Unified Messaging Solutions LLC Patent Litigation; and It further appearing that case 13 C 6143, Huster v. j2 Global Communications, Inc., et al. pending before the Hon. Samuel Der−Yeghiayan falls within the scope of MDL 2371; therefore It is ordered, that case 13 C 6143 be directly reassigned Judge Lefkow. Case reassigned to the Honorable Joan H. Lefkow for all further proceedings. Signed by Executive Committee on 9/3/13. (ef,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/03/2013)
09/06/2013	4		

			SUMMONS Returned Executed by Phyllis A Huster as to j2 Global Communications, Inc. on 9/5/2013, answer due 9/26/2013. (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/06/2013)
09/06/2013	5		SUMMONS Returned Executed by Phyllis A Huster as to Advanced Messaging Technologies, Inc. on 9/5/2013, answer due 9/26/2013. (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/06/2013)
09/16/2013	6		SUMMONS Returned Executed by Phyllis A Huster as to Acacia Patent Acquisition LLC on 9/10/2013, answer due 10/1/2013. (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/16/2013)
09/16/2013	7		SUMMONS Returned Executed by Phyllis A Huster as to Unified Messaging Solutions, LLC on 9/10/2013, answer due 10/1/2013. (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/16/2013)
09/19/2013	8		ATTORNEY Appearance for Defendants Advanced Messaging Technologies, Inc., j2 Global Communications, Inc. by William Butler Berndt (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/19/2013)
09/19/2013	9		MOTION by Defendants Advanced Messaging Technologies, Inc., j2 Global Communications, Inc. for extension of time *to answer or otherwise plead* (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/19/2013)
09/19/2013	10		NOTICE of Motion by William Butler Berndt for presentment of extension of time 9 before Honorable Joan H. Lefkow on 9/24/2013 at 08:30 AM. (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/19/2013)
09/19/2013	11		NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by Advanced Messaging Technologies, Inc., j2 Global Communications, Inc. (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/19/2013)
09/19/2013	12		MOTION for Leave to Appear Pro Hac Vice Filing fee $ 50, receipt number 0752−8750548. (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/19/2013)
09/20/2013	13		ATTORNEY Appearance for Defendants Advanced Messaging Technologies, Inc., j2 Global Communications, Inc. by Paula Enid Litt (Litt, Paula) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/20/2013)
09/23/2013	14		MINUTE entry before Honorable Joan H. Lefkow:Application Brian R. England of to appear pro hac vice on behalf of j2 Global, Inc., and Advanced Messaging Technologies, Inc. 12 is granted.Mailed notice (mad,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/23/2013)
09/23/2013	15		MINUTE entry before Honorable Joan H. Lefkow:Motion of j2 Global, Inc., and Advanced Messaging Technologies, Inc. for extension of time to 10/28/2013 to answer or otherwise plead 9 is granted.Mailed notice (mad,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/23/2013)

09/25/2013	16		ATTORNEY Appearance for Defendant Unified Messaging Solutions, LLC by Timothy E. Grochocinski (Grochocinski, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/25/2013)
09/25/2013	17		ATTORNEY Appearance for Defendant Unified Messaging Solutions, LLC by Aaron Ward Purser (Purser, Aaron) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/25/2013)
09/25/2013	18		NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by Unified Messaging Solutions, LLC (Grochocinski, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/25/2013)
09/25/2013	19		MOTION by Defendant Unified Messaging Solutions, LLC for extension of time to file answer *or otherwise plead* (Grochocinski, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/25/2013)
09/25/2013	20		NOTICE of Motion by Timothy E. Grochocinski for presentment of motion for extension of time to file answer 19 before Honorable Joan H. Lefkow on 10/1/2013 at 08:30 AM. (Grochocinski, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/25/2013)
09/30/2013	21		MINUTE entry before Honorable Joan H. Lefkow:Motion of Unified Messaging Solutions for extension of time to 10/28/2013 to answer or otherwise plead 19 is granted.Mailed notice (mad,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/30/2013)
09/30/2013	22		MINUTE entry before Honorable Joan H. Lefkow:As indicated at the status hearing on 9/27/2013 in Case No. 12 C 6286, Mr. Charles R Bobo, II is to answer or otherwise plead to the complaint by 10/28/2013. Mailed notice (mad,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/30/2013)
10/09/2013	23		SUMMONS Returned Executed by Phyllis A Huster as to Charles R Bobo, II on 9/30/2013, answer due 10/21/2013. (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/09/2013)
10/22/2013	24		ATTORNEY Appearance for Defendant Acacia Patent Acquisition LLC by Julie Ann Meyer (Meyer, Julie) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/22/2013)
10/22/2013	25		MOTION for Leave to Appear Pro Hac Vice Filing fee $ 50, receipt number 0752−8852031. (Attachments: # 1 Exhibit Attachment A to Pro Hac Vice Application of Marc J. Schneider)(Meyer, Julie) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/22/2013)
10/22/2013	26		MOTION for Leave to Appear Pro Hac Vice Filing fee $ 50, receipt number 0752−8852186. (Meyer, Julie) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/22/2013)
10/24/2013	27		MOTION for Leave to Appear Pro Hac Vice Filing fee $ 50, receipt number 0752−8863296. *Ed Nelson* (Grochocinski, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/24/2013)
10/24/2013	28		NOTICE of Motion by Timothy E. Grochocinski for presentment of motion to appear pro hac vice 27 before Honorable Joan H. Lefkow on 11/5/2013 at 09:30 AM. (Grochocinski, Timothy) [Transferred from Illinois Northern on

			10/15/2014.] (Entered: 10/24/2013)
10/25/2013	29		ATTORNEY Appearance for Defendant Charles R Bobo, II by Timothy P. Maloney (Maloney, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/25/2013)
10/25/2013	30		ATTORNEY Appearance for Defendant Charles R Bobo, II by Jared E Hedman (Hedman, Jared) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/25/2013)
10/25/2013	31		MOTION for Leave to Appear Pro Hac Vice Filing fee $ 50, receipt number 0752−8868943. (Johnson, Edward) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/25/2013)
10/25/2013	32		CERTIFICATE of Service (Johnson, Edward) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/25/2013)
10/28/2013	33		MOTION for Leave to Appear Pro Hac Vice (Sacks, Robert) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	34		PAYMENT by j2 Global Communications, Inc. of Pro Hac Fee $ 50, receipt number 0752−8872503. (Sacks, Robert) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	35		MOTION by Defendant Charles R Bobo, II to dismiss for lack of jurisdiction *Pursuant to Fed. R. Civ. P. 12(b)(2)* (Maloney, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	36		MOTION by Defendants Charles R Bobo, II, Unified Messaging Solutions, LLC, Advanced Messaging Technologies, Inc., j2 Global Communications, Inc., Acacia Patent Acquisition LLC to dismiss (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	37		MEMORANDUM by Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., Charles R Bobo, II, Unified Messaging Solutions, LLC, j2 Global Communications, Inc. in support of motion to dismiss 36 (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	38		MEMORANDUM by Charles R Bobo, II in support of motion to dismiss/lack of jurisdiction 35 *Pursuant to Fed. R. Civ. P. 12(b)(2)* (Maloney, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	39		AFFIDAVIT by Defendant Charles R Bobo, II in Support of MOTION by Defendant Charles R Bobo, II to dismiss for lack of jurisdiction *Pursuant to Fed. R. Civ. P. 12(b)(2)* 35 (Maloney, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	40		NOTICE of Motion by William Butler Berndt for presentment of motion to dismiss 36 before Honorable Joan H. Lefkow on 11/7/2013 at 08:30 AM. (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	41		NOTICE of Motion by Timothy P. Maloney for presentment of motion to dismiss/lack of jurisdiction 35 before Honorable Joan H. Lefkow on

			11/7/2013 at 08:30 AM. (Maloney, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	42		MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *j2 Global, Inc.'s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6)* (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	43		NOTICE of Motion by William Butler Berndt for presentment of Motion to Dismiss for Failure to State a Claim 42 before Honorable Joan H. Lefkow on 11/7/2013 at 08:30 AM. (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	44		MOTION by Defendant Acacia Patent Acquisition LLC to dismiss *Motion to Dismiss* (Meyer, Julie) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	45		NOTICE of Motion by Julie Ann Meyer for presentment of motion to dismiss before Honorable Joan H. Lefkow on 11/7/2013 at 8:30 AM. (Meyer, Julie) (Docket text Modified by Clerk's Office.). [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/28/2013	46		MEMORANDUM by Acacia Patent Acquisition LLC in support of motion to dismiss 44 (Meyer, Julie) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/28/2013)
10/30/2013	47		NOTICE of Motion by Julie Ann Meyer for presentment of before Honorable Joan H. Lefkow on 11/7/2013 at 08:30 AM. (Meyer, Julie) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/30/2013)
11/05/2013	48		MINUTE entry before Honorable Joan H. Lefkow:Motion of Marc J. Schneider for leave to appear pro hac vice on behalf of Acacia Patent Acquisition, LLC 25 is granted. Motion of Sarah Brooks for leave to appear pro hac vice on behalf of Acacia Patent Acquisition, LLC 26 is granted. Mailed notice (mad,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 11/05/2013)
11/05/2013	49		MINUTE entry before Honorable Joan H. Lefkow:Motion of Edward R. Nelson, III for leave to appear pro hac vice on behalf of Unified Messaging Solutions, LLC 27 is granted. Mailed notice (mad,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 11/05/2013)
11/05/2013	50		MINUTE entry before Honorable Joan H. Lefkow:Motion of Edward Eric Johnson for leave to appear pro hac vice on behalf of j2 Global Communications, Inc. 31 is granted. Mailed notice (mad,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 11/05/2013)
11/05/2013	51		MINUTE entry before Honorable Joan H. Lefkow:Motion of Robert A. Sacks for leave to appear pro hac vice on behalf of j2 Global Communications, Inc. 33 is granted. Mailed notice (mad,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 11/05/2013)
11/06/2013	52		MOTION by Defendants Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., Charles R Bobo, II, Unified Messaging Solutions, LLC, j2 Global Communications, Inc., Plaintiff Phyllis A Huster to set a briefing schedule *Joint Motion for Entry of Agreed Briefing Schedule*

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			on Motions to Dismiss (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 11/06/2013)
11/06/2013	53		MINUTE entry before Honorable Joan H. Lefkow:Joint motion to set a briefing schedule 52 is granted. Plaintiff to file oppositions to Defendants' Motions to Dismiss 35 , 36 , 42 , 44 on or before December 5, 2013. Defendants to file their reply briefs in support of their Motions to Dismiss on or before January 9, 2013. The November 7, 2013 presentment hearing on Defendants' Motions to Dismiss is stricken.Mailed notice (mad,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 11/06/2013)
12/05/2013	54		MEMORANDUM by Phyllis A Huster in Opposition to motion to dismiss 36 *due to alleged laches* (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 12/05/2013)
12/05/2013	55		MEMORANDUM by Phyllis A Huster in Opposition to motion to dismiss 36 *portions of prayer for relief* (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 12/05/2013)
12/05/2013	56		MEMORANDUM by Phyllis A Huster in Opposition to Motion to Dismiss for Failure to State a Claim 42 , motion to dismiss 44 *for lack of current ownership* (Attachments: # 1 Exhibit Exs. A−C to memo, # 2 Exhibit Exs. D−I to memo)(Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 12/05/2013)
12/05/2013	57		MEMORANDUM by Phyllis A Huster in Opposition to motion to dismiss 36 , motion to dismiss/lack of jurisdiction 35 *over the persons of Bobo, j2, Acacia* (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 12/05/2013)
12/05/2013	58		MEMORANDUM by Phyllis A Huster in Opposition to Motion to Dismiss for Failure to State a Claim 42 , motion to dismiss 36 , motion to dismiss 44 , motion to dismiss/lack of jurisdiction 35 *overview of response to various portions and combinations* (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 12/05/2013)
12/10/2013	59		MOTION by counsel for Plaintiff Phyllis A Huster to withdraw as attorney *for Plaintiff* (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 12/10/2013)
12/10/2013	60		NOTICE of Motion by John R. Crossan for presentment of motion to withdraw as attorney 59 before Honorable Joan H. Lefkow on 1/7/2014 at 11:00 AM. (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 12/10/2013)
12/10/2013	61		MOTION by counsel for Plaintiff Phyllis A Huster to withdraw as attorney *for Plaintiff P.A. Huster* (Crossan, John) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 12/10/2013)
12/17/2013	62		MOTION by Defendants Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., Charles R Bobo, II, Unified Messaging Solutions, LLC, j2 Global Communications, Inc. for extension of time to file response/reply as to order on motion to set a briefing schedule,, terminate hearings,, set motion and RRdeadlines/hearings, 53 *Agreed Motion For An Extension Of Time To File Reply Briefs* (Berndt, William) [Transferred from

			Illinois Northern on 10/15/2014.] (Entered: 12/17/2013)
12/17/2013	63		NOTICE of Motion by William Butler Berndt for presentment of motion for extension of time to file response/reply,, motion for relief,,,,, 62 before Honorable Joan H. Lefkow on 1/7/2014 at 11:00 AM. (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 12/17/2013)
01/06/2014	64		ORDER: Motion of John R. Crossin for leave to withdraw as counsel for plaintiff 61 is granted. Status hearing is set for 1/21/2014 at 11:00 a.m. for new counsel to appear. Defendants' motion for extension of time to 1/23/2014 to file reply briefs in support of motions to dismiss 62 is granted. Signed by the Honorable Joan H. Lefkow on 1/6/2014 (td,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 01/07/2014)
01/13/2014	65		MOTION by Defendants Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., Charles R Bobo, II, Unified Messaging Solutions, LLC, j2 Global Communications, Inc. for extension of time to file response/reply as to order on motion to set a briefing schedule,, terminate hearings,, set motion and RRdeadlines/hearings, 53 *Second Agreed Motion For An Extension Of Time To File Reply Briefs* (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 01/13/2014)
01/13/2014	66		NOTICE of Motion by William Butler Berndt for presentment of motion for extension of time to file response/reply,, motion for relief,,,,, 65 before Honorable Joan H. Lefkow on 1/16/2014 at 11:00 AM. (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 01/13/2014)
01/15/2014	67		MINUTE entry before the Honorable Joan H. Lefkow:Defendants' motion for extension of time 65 to 2/6/2014 to file reply briefs in support of motions to dismiss is granted. Mailed notice (mad,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 01/15/2014)
01/21/2014	68		MINUTE entry before the Honorable Joan H. Lefkow:Status hearing held on 1/21/2014. Oral motion of new counsel for plaintiff for leave to file his appearance is granted. Date of 2/6/2014 by which defendants are to file reply briefs in support of motions to dismiss will stand.Mailed notice (mad,) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 01/21/2014)
02/01/2014	69		ATTORNEY Appearance for Plaintiff Phyllis A Huster by James M. Falvey (Falvey, James) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 02/01/2014)
02/04/2014	70		WITHDRAWING *Julie A. Meyer* as counsel for Defendant Acacia Patent Acquisition LLC and substituting Megan Pike Toth as counsel of record (Toth, Megan) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 02/04/2014)
02/04/2014	71		NOTICE by Acacia Patent Acquisition LLC re withdrawal substitution of counsel within same firm 70 (Toth, Megan) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 02/04/2014)
02/06/2014	72		REPLY by Defendant Acacia Patent Acquisition LLC to memorandum in support of motion 46 , motion to dismiss 44 (Toth, Megan) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 02/06/2014)
02/06/2014	73		

			REPLY by Defendant j2 Global Communications, Inc. to Motion to Dismiss for Failure to State a Claim 42 (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 02/06/2014)
02/06/2014	74		REPLY by Defendants Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., Charles R Bobo, II, Unified Messaging Solutions, LLC, j2 Global Communications, Inc. to motion to dismiss 36 (Berndt, William) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 02/06/2014)
02/06/2014	75		REPLY by Charles R Bobo, II to memorandum in opposition to motion 57 *in Support of Charles R. Bobo II's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2) for Lack of Personal Jurisdiction* (Maloney, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 02/06/2014)
08/07/2014	76		NOTICE by Timothy E. Grochocinski of Change of Address (Grochocinski, Timothy) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 08/07/2014)
09/19/2014	77		ORDER Entered by the Honorable Joan H. Lefkow on 9/19/2014: This case is hereby transferred to the United States District Court for the Northern District of Georgia. (See Opinion and Order). Civil case terminated. Mailed notice (tlm) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/22/2014)
09/19/2014	78		OPINION and Order Entered by the Honorable Joan H. Lefkow on 9/19/2014. Mailed notice (tlm) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 09/22/2014)
10/14/2014	79		TRANSFERRED to the Northern District of Georgia the electronic record. (tlm) [Transferred from Illinois Northern on 10/15/2014.] (Entered: 10/14/2014)
10/15/2014	80		Case transferred in from District of Illinois Northern; Case Number 1:13−cv−06143. Original file certified copy of transfer order and docket sheet received. (Entered: 10/15/2014)
10/21/2014	81		GUIDELINES TO PARTIES AND COUNSEL IN CASES PROCEEDING BEFORE THE HONORABLE AMY TOTENBERG. Signed by Judge Amy Totenberg on 10/21/2014. (bdb) (Entered: 10/21/2014)
10/21/2014			Clerks Certificate of Mailing as to Advanced Messaging Technologies, Inc., Charles R Bobo, II, Phyllis A Huster re 81 Guidelines. (bdb) (Entered: 10/21/2014)
11/10/2014	82		NOTICE of Appearance by Dan Robert Gresham, Eric G. Maurer and Wesley A. Roberts on behalf of Acacia Patent Acquisition LLC (Gresham, Dan) Modified on 11/10/2014 to add attorneys. (jtj) (Entered: 11/10/2014)
11/14/2014	83		APPLICATION for Admission of Sarah S. Brooks Pro Hac Vice (Application fee $ 150, receipt number 113E−5500002)by Acacia Patent Acquisition LLC. (Gresham, Dan) (Entered: 11/14/2014)
11/14/2014	84		APPLICATION for Admission of Marc Jeffrey Schneider Pro Hac Vice (Application fee $ 150, receipt number 113E−5500037)by Acacia Patent Acquisition LLC. (Gresham, Dan) (Entered: 11/14/2014)

11/14/2014	85		NOTICE of Appearance by Dan Robert Gresham, Eric G. Maurer and Wesley A. Roberts on behalf of Advanced Messaging Technologies, Inc., J2 Global Communications, Inc. (Gresham, Dan) Modified on 11/17/2014 to add attorneys. (jtj) (Entered: 11/14/2014)
11/18/2014	86		APPLICATION for Admission of Brian England Pro Hac Vice (Application fee $ 150, receipt number 113E−5505380)by J2 Global Communications, Inc.. (Gresham, Dan) (Entered: 11/18/2014)
11/18/2014	87		APPLICATION for Admission of Edward E. Johnson Pro Hac Vice (Application fee $ 150, receipt number 113E−5505421)by J2 Global Communications, Inc.. (Gresham, Dan) (Entered: 11/18/2014)
11/18/2014	88		APPLICATION for Admission of Robert A. Sacks Pro Hac Vice (Application fee $ 150, receipt number 113E−5505441)by J2 Global Communications, Inc.. (Gresham, Dan) (Entered: 11/18/2014)
11/20/2014	89		NOTICE of Appearance by Peter F. Schoenthaler on behalf of Charles R Bobo, II (Schoenthaler, Peter) (Entered: 11/20/2014)
11/20/2014	90		CERTIFICATE of Consent to Withdraw Attorneys Timothy P. Maloney and Jared E Hedman re 30 Notice of Appearance, 29 Notice of Appearance, by Peter F. Schoenthaler on behalf of Charles R Bobo, II (Schoenthaler, Peter) Modified on 11/21/2014 to edit docket text. (jtj) (Entered: 11/20/2014)
11/24/2014			RETURN of 83 APPLICATION for Admission of Sarah S. Brooks Pro Hac Vice (Application fee $ 150, receipt number 113E−5500002) to attorney for correction re: format. (pb) (Entered: 11/24/2014)
11/24/2014			APPROVAL by Clerks Office re: 84 APPLICATION for Admission of Marc Jeffrey Schneider Pro Hac Vice (Application fee $ 150, receipt number 113E−5500037). Attorney Marc Jeffrey Schneider added appearing on behalf of Acacia Patent Acquisition LLC (pb) (Entered: 11/24/2014)
11/24/2014	91		ORDER GRANTING 84 Application of Marc Jeffrey Schneider for Admission Pro Hac Vice. Signed by Judge Amy Totenberg on 11/24/2014. (jtj) (Entered: 11/24/2014)
11/24/2014	92		APPLICATION for Admission of Sarah S. Brooks Pro Hac Vice by Acacia Patent Acquisition LLC. (Gresham, Dan) (Entered: 11/24/2014)
11/26/2014			APPROVAL by Clerks Office re: 86 APPLICATION for Admission of Brian England Pro Hac Vice (Application fee $ 150, receipt number 113E−5505380). Attorney Brian R. England added appearing on behalf of Advanced Messaging Technologies, Inc., J2 Global Communications, Inc. (pb) (Entered: 11/26/2014)
11/26/2014			APPROVAL by Clerks Office re: 87 APPLICATION for Admission of Edward E. Johnson Pro Hac Vice (Application fee $ 150, receipt number 113E−5505421). Attorney Edward E. Johnson added appearing on behalf of Advanced Messaging Technologies, Inc., J2 Global Communications, Inc. (pb) (Entered: 11/26/2014)
11/26/2014			APPROVAL by Clerks Office re: 88 APPLICATION for Admission of Robert A. Sacks Pro Hac Vice (Application fee $ 150, receipt number 113E−5505441). Attorney Robert A. Sacks added appearing on behalf of

			Advanced Messaging Technologies, Inc., J2 Global Communications, Inc. (pb) (Entered: 11/26/2014)
11/26/2014			APPROVAL by Clerks Office re: 92 APPLICATION for Admission of Sarah S. Brooks Pro Hac Vice. Attorney Sarah S. Brooks added appearing on behalf of Acacia Patent Acquisition LLC (pb) (Entered: 11/26/2014)
12/01/2014	93		ORDER GRANTING 86 Application of Brian R. England for Admission Pro Hac Vice. Signed by Judge Amy Totenberg on 12/01/2014. (jtj) (Entered: 12/01/2014)
12/01/2014	94		ORDER GRANTING 87 Application of Edward E. Johnson for Admission Pro Hac Vice. Signed by Judge Amy Totenberg on 12/01/2014. (jtj) (Entered: 12/01/2014)
12/01/2014	95		ORDER GRANTING 88 Application of Robert A. Sacks for Admission Pro Hac Vice. Signed by Judge Amy Totenberg on 12/01/2014. (jtj) (Entered: 12/01/2014)
12/01/2014	96		ORDER GRANTING 92 Application of Sarah S. Brooks for Admission Pro Hac Vice. Signed by Judge Amy Totenberg on 12/01/2014. (jtj) (Entered: 12/01/2014)
12/02/2014			Case reassigned to Judge Eleanor L. Ross. Judge Amy Totenberg no longer assigned to case. NOTICE TO ALL COUNSEL OF RECORD: The Judge designation in the civil action number assigned to this case has been changed to 1:14−cv−3304−ELR. Please make note of this change in order to facilitate the docketing of pleadings in this case. (jtj) (Entered: 12/02/2014)
12/04/2014	97		Letter from Clerk re: LR 83.1 Pro Hac Vice requirements sent to James M. Falvey. Clerk to follow−up by 1/5/2015. (pb) (Entered: 12/04/2014)
12/04/2014	98		Letter from Clerk re: LR 83.1 Pro Hac Vice requirements sent to John R. Crossan. Clerk to follow−up by 1/5/2015. (pb) (Entered: 12/04/2014)
12/04/2014	99		Letter from Clerk re: LR 83.1 Pro Hac Vice requirements sent to Paula Enid Litt. Clerk to follow−up by 1/5/2015. (pb) (Entered: 12/04/2014)
12/04/2014	100		Certification of Consent to Substitution of Counsel. Dan Robert Gresham replacing attorney Paula Enid Litt. (Gresham, Dan) (Entered: 12/04/2014)
12/04/2014	101		Letter from Clerk re: LR 83.1 Pro Hac Vice requirements sent to William Butler Berndt. Clerk to follow−up by 1/5/2015. (pb) (Entered: 12/04/2014)
12/04/2014	102		Certification of Consent to Substitution of Counsel. Dan Robert Gresham replacing attorney William Butler Berndt. (Gresham, Dan) (Entered: 12/04/2014)
12/04/2014	103		Letter from Clerk re: LR 83.1 Pro Hac Vice requirements sent to Aaron W. Purser. Clerk to follow−up by 1/5/2015. (pb) (Entered: 12/04/2014)
12/04/2014	104		Letter from Clerk re: LR 83.1 Pro Hac Vice requirements sent to Edward R. Nelson. Clerk to follow−up by 1/5/2015. (pb) (Entered: 12/04/2014)
12/04/2014	105		Certification of Consent to Substitution of Counsel. Dan Robert Gresham replacing attorney Aaron W. Purser. (Gresham, Dan) (Entered: 12/04/2014)

12/04/2014	106		Letter from Clerk re: LR 83.1 Pro Hac Vice requirements sent to Timothy E. Grochocinski. Clerk to follow−up by 1/5/2015. (pb) (Entered: 12/04/2014)
12/04/2014	107		Letter from Clerk re: LR 83.1 Pro Hac Vice requirements sent to Julie Ann Meyer. Clerk to follow−up by 1/5/2015. (pb) (Entered: 12/04/2014)
12/04/2014	108		Letter from Clerk re: LR 83.1 Pro Hac Vice requirements sent to Megan Pike Toth. Clerk to follow−up by 1/5/2015. (pb) (Entered: 12/04/2014)
12/04/2014	109		Letter from Clerk re: LR 83.1 Pro Hac Vice requirements sent to Timothy P. Maloney. Clerk to follow−up by 1/5/2015. (pb) (Entered: 12/04/2014)
12/04/2014	110		Letter from Clerk re: LR 83.1 Pro Hac Vice requirements sent to Jared E. Hedman. Clerk to follow−up by 1/5/2015. (pb) (Entered: 12/04/2014)
12/04/2014	111		Certification of Consent to Substitution of Counsel. Dan Robert Gresham replacing attorney Julie Ann Meyer and Megan Pike Toth. (Gresham, Dan) (Entered: 12/04/2014)
12/15/2014	112		NOTICE of Prior Withdrawal as Counsel for Plaintiff and of Substitute Counsel's Appearance in the Illinois Case filed Attorney John R. Crossan for Phyllis A Huster. (aaq) (Entered: 12/16/2014)
12/29/2014	113		INSTRUCTIONS FOR CASES ASSIGNED TO THE HONORABLE ELEANOR L. ROSS. Signed by Judge Eleanor L. Ross on 12/29/2014. (bdb) (Entered: 12/29/2014)
01/05/2015	114		NOTICE of Appearance by Charlena L. Thorpe on behalf of Phyllis A Huster (Thorpe, Charlena) (Entered: 01/05/2015)
01/21/2015	115		NOTICE of Appearance by Dan Robert Gresham on behalf of Unified Messaging Solutions, LLC (Gresham, Dan) (Entered: 01/21/2015)
01/26/2015	116		APPLICATION for Admission of Timothy E. Grochocinski Pro Hac Vice (Application fee $ 150, receipt number 113E−5620655)by Unified Messaging Solutions, LLC. (Gresham, Dan) (Entered: 01/26/2015)
01/26/2015	117		APPLICATION for Admission of Joseph Paul Oldaker Pro Hac Vice (Application fee $ 150, receipt number 113E−5620675)by Unified Messaging Solutions, LLC. (Gresham, Dan) (Entered: 01/26/2015)
01/26/2015	118		APPLICATION for Admission of Edward R. Nelson, III Pro Hac Vice (Application fee $ 150, receipt number 113E−5620701)by Unified Messaging Solutions, LLC. (Gresham, Dan) (Entered: 01/26/2015)
01/26/2015	119		APPLICATION for Admission of Thomas Christopher Cecil Pro Hac Vice (Application fee $ 150, receipt number 113E−5620721)by Unified Messaging Solutions, LLC. (Gresham, Dan) (Entered: 01/26/2015)
01/26/2015			ADDENDUM re 113 INSTRUCTIONS FOR CASES ASSIGNED TO THE HONORABLE ELEANOR L. ROSS. **Motions for Temporary Restraining Order or Preliminary Injunction:** Any request for a temporary restraining order or for preliminary injunctive relief must be made by a separate motion. A request for a temporary restraining order or preliminary injunction found only in the complaint will not be considered. After filing an appropriate motion, the movant must contact Ms. York to request expedited consideration. Ordered by Judge Eleanor L. Ross on 1/26/2015. (mdy)

			(Entered: 01/26/2015)
01/30/2015			APPROVAL by Clerks Office re: 116 APPLICATION for Admission of Timothy E. Grochocinski Pro Hac Vice (Application fee $ 150, receipt number 113E−5620655). Attorney Timothy E. Grochocinski added appearing on behalf of Unified Messaging Solutions, LLC (pb) (Entered: 01/30/2015)
01/30/2015			APPROVAL by Clerks Office re: 117 APPLICATION for Admission of Joseph Paul Oldaker Pro Hac Vice (Application fee $ 150, receipt number 113E−5620675). Attorney Joseph Paul Oldaker added appearing on behalf of Unified Messaging Solutions, LLC (pb) (Entered: 01/30/2015)
01/30/2015	120		ORDER granting 117 Application for Admission Pro Hac Vice for Petitioner Joseph Paul Oldaker. Signed by Judge Eleanor L. Ross on 01/30/15. (fap) (Entered: 02/02/2015)
01/30/2015	121		ORDER granting 116 Application for Admission Pro Hac Vice for Petitioner Timothy E. Grochocinski. Signed by Judge Eleanor L. Ross on 01/30/15. (fap) (Entered: 02/02/2015)
02/02/2015			APPROVAL by Clerks Office re: 118 APPLICATION for Admission of Edward R. Nelson, III Pro Hac Vice (Application fee $ 150, receipt number 113E−5620701). Attorney Edward R. Nelson, III added appearing on behalf of Unified Messaging Solutions, LLC (pb) (Entered: 02/02/2015)
02/02/2015			APPROVAL by Clerks Office re: 119 APPLICATION for Admission of Thomas Christopher Cecil Pro Hac Vice (Application fee $ 150, receipt number 113E−5620721). Attorney Thomas Christopher Cecil added appearing on behalf of Unified Messaging Solutions, LLC (pb) (Entered: 02/02/2015)
02/02/2015	122		ORDER granting 118 Application for Admission Pro Hac Vice Edward R. Nelson, III. Signed by Judge Eleanor L. Ross on 2/2/2015. (bdb) (Entered: 02/02/2015)
02/02/2015	123		ORDER granting 119 Application for Admission Pro Hac Vice Thomas Christopher Cecil. Signed by Judge Eleanor L. Ross on 2/2/2015. (bdb) (Entered: 02/02/2015)
02/02/2015			Clerks Certificate of Mailing as to Unified Messaging Solutions, LLC re 123 Order on Application for Admission PHV, 122 Order on Application for Admission PHV to Edward Nelson and Thomas Cecil. (bdb) (Entered: 02/02/2015)
02/04/2015	124		Consent MOTION to Amend *Complaint* by Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., Charles R Bobo, II, Phyllis A Huster, J2 Global Communications, Inc., Unified Messaging Solutions, LLC. (Attachments: # 1 Text of Proposed Order)(Gresham, Dan) (Entered: 02/04/2015)
02/06/2015	125		ORDER granting 124 Plaintiff's Consent Motion to File Amended Complaint. Plaintiff Phyllis A. Huster shall file an Amended Complaint on or before February 11, 2015. Upon the filing of the Amended Complaint, Defendants motions at Docket Nos. 36, 42, and 44 shall be deemed withdrawn, without prejudice, but may be re−filed if deemed necessary by

			any Defendant within 14 days after service of Plaintiffs Amended Complaint. Signed by Judge Eleanor L. Ross on 2/6/15. (ddm) (Entered: 02/06/2015)
02/06/2015			Clerks Certificate of Mailing to attorney James M. Falvey re 125 Order. (ddm) (Entered: 02/06/2015)
02/11/2015	126		AMENDED COMPLAINT against All Defendants with Jury Demand, filed by Phyllis A Huster.(Thorpe, Charlena) Please visit our website at http://www.gand.uscourts.gov/forms to obtain Pretrial Instructions which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 02/11/2015)
02/11/2015	127		MOTION to Withdraw James M. Falvey as Attorney by Phyllis A Huster. (bdb) (Entered: 02/12/2015)
02/12/2015	128		Supplemental AMENDED COMPLAINT *correcting informalities* against All Defendants with Jury Demand, filed by Phyllis A Huster.(Thorpe, Charlena) Please visit our website at http://www.gand.uscourts.gov/forms to obtain Pretrial Instructions which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 02/12/2015)
02/18/2015			MINUTE ORDER (by docket entry only) GRANTING 127 Motion to Withdraw James M. Falvey as Attorney. Ordered by Judge Eleanor L. Ross on 2/18/2015. (Attorney James M. Falvey terminated) (mdy) (Entered: 02/18/2015)
02/18/2015	129		Consent MOTION for Extension of Time to File Answer *to the Corrected Amended Complaint* by Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., Charles R Bobo, II, Phyllis A Huster, J2 Global Communications, Inc., Unified Messaging Solutions, LLC. (Attachments: # 1 Text of Proposed Order)(Gresham, Dan) (Entered: 02/18/2015)
02/18/2015	130		ORDER granting 129 Joint Motion for Extension of Time to Answer re 128 Amended Complaint. Acacia Patent Acquisition LLC; Advanced Messaging Technologies, Inc.; Charles R Bobo, II; J2 Global Communications, Inc. and Unified Messaging Solutions, LLC Answer due 3/12/2015. Signed by Judge Eleanor L. Ross on 2/18/2015. (bdb) (Entered: 02/19/2015)
03/11/2015	131		Emergency MOTION to Disqualify Attorney *Thomas Horstemeyer; Sullivan &Cromwell, LLP; InnovaLaw, LLC; Nelson Bumgardner Casto PC; Arnstein &Lehr; and Strading Yocca Carlson &Rauth* with Brief In Support by Phyllis A Huster. (Attachments: # 1 Affidavit Declaration of Phyllis Huster, # 2 Affidavit Declarations of Charlena Thorpe, # 3 Exhibit Ex. A − Huster's Hand Drawing of Invention, # 4 Exhibit Ex. B − Collen Beard Affidavit, # 5 Exhibit Ex. C − Letter From Hopkins &Thomas to Phyllis Huster, # 6 Exhibit Ex. D − Fax From Hopkins &Thomas to Phyllis Huster, # 7 Exhibit Ex. F − Declaration and Power of Attorney filed in the application for U.S. Patent No. 5,675,507)(Thorpe, Charlena) (Entered: 03/11/2015)
03/11/2015	132		AFFIDAVIT in Support re 131 Emergency MOTION to Disqualify Attorney *Thomas Horstemeyer; Sullivan &Cromwell, LLP; InnovaLaw, LLC; Nelson Bumgardner Casto PC; Arnstein &Lehr; and Strading Yocca Carlson &Rauth CORRECTED AFFIDAVIT WITH EXHIBIT E* filed by Phyllis A Huster. (Attachments: # 1 Exhibit Ex. A − Huster's Hand Drawing of

			Invention, # 2 Exhibit Ex. B − Collen Beard Affidavit, # 3 Exhibit Ex. C − Letter from Hopkins &Thomas to Huster, # 4 Exhibit Ex. D − Fax from Hopkins &Thomas to Huster, # 5 Exhibit Ex. E − Charles Bobo's Calendar Entry, # 6 Exhibit Ex. F − Declaration and Power of Attorney filed in the application for U.S. Patent No. 5,675,507)(Thorpe, Charlena) (Entered: 03/11/2015)
03/12/2015	133		Joint MOTION to Dismiss with Brief In Support by Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., Charles R Bobo, II, J2 Global Communications, Inc., Unified Messaging Solutions, LLC. (Attachments: # 1 Brief, # 2 Exhibit Johnson Declaration)(Gresham, Dan) (Entered: 03/12/2015)
03/12/2015	134		MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM with Brief In Support by J2 Global Communications, Inc.. (Attachments: # 1 Brief)(Gresham, Dan) (Entered: 03/12/2015)
03/12/2015	135		MOTION for Summary Judgment (Previously Amended MOTION to Dismiss) with Brief In Support by Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., Charles R Bobo, II, J2 Global Communications, Inc., Unified Messaging Solutions, LLC. (Attachments: # 1 Brief, # 2 Exhibit Johnson Declaration, # 3 Exhibit A, # 4 Exhibit B)(Gresham, Dan) Modified on 1/28/2016 to change motion type(kdw). (Entered: 03/12/2015)
03/12/2015	136		MOTION to Dismiss with Brief In Support by Acacia Patent Acquisition LLC. (Attachments: # 1 Brief)(Gresham, Dan) (Entered: 03/12/2015)
03/12/2015	137		MOTION for Summary Judgment (Previoulsly MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM) with Brief In Support by Charles R Bobo, II. (Attachments: # 1 Brief in Support)(Schoenthaler, Peter) Modified on 1/28/2016 to change motion type (kdw). (Entered: 03/12/2015)
03/18/2015	138		NOTICE of Change of Address for Thomas Christopher Cecil, counsel for Unified Messaging Solutions, LLC (Cecil, Thomas) (Entered: 03/18/2015)
03/18/2015	139		NOTICE of Change of Address for Joseph Paul Oldaker, counsel for Unified Messaging Solutions, LLC (Oldaker, Joseph) (Entered: 03/18/2015)
03/18/2015	140		NOTICE of Change of Address for Edward R. Nelson, III, counsel for Unified Messaging Solutions, LLC (Nelson, Edward) (Entered: 03/18/2015)
03/19/2015	141		NOTICE of Change of Address for Timothy E. Grochocinski, counsel for Unified Messaging Solutions, LLC (Grochocinski, Timothy) (Entered: 03/19/2015)
03/19/2015	142		Emergency MOTION for Discovery *Limited to Plaintiff's Declarations*, Emergency MOTION for Extension of Time to File Response re: 131 Emergency MOTION to Disqualify Attorney *Thomas Horstemeyer; Sullivan &Cromwell, LLP; InnovaLaw, LLC; Nelson Bumgardner Casto PC; Arnstein &Lehr; and Strading Yocca Carlson &Rauth* with Brief In Support by Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., J2 Global Communications, Inc., Unified Messaging Solutions, LLC. (Attachments: # 1 Exhibit 1 − Huster Resolution Not to Seek Legal Counsel of Hopkins &Thomas, # 2 Text of Proposed Order)(Maurer, Eric) (Entered:

			03/19/2015)
03/24/2015	143		ORDER granting 142 Motion to Authorize Limited Discovery and for Extension of Time to Oppose Plaintiff's Motion to Disqualify. It is hereby ORDERED that: (i) Defendants are authorized to immediately take a four−hour deposition of each of Phyllis Huster and Collen Beard; (ii) Ms. Huster and Ms. Beard and their counsel, if any, shall appear for their respective depositions no later than April 8, 2015; and (iii) Defendants' deadline to respond to Plaintiff's Motion to Disqualify is extended through and including April 20, 2014. Signed by Judge Eleanor L. Ross on 3/24/2015. (bdb) (Entered: 03/25/2015)
03/31/2015	144		Consent MOTION for Extension of Time to Depose Phyllis A. Huster And To Oppose Plaintiff's Motion To Disqualify by Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., Phyllis A Huster, J2 Global Communications, Inc., Unified Messaging Solutions, LLC. (Attachments: # 1 Text of Proposed Order)(Roberts, Wesley) Modified to remove all caps on 4/1/2015 (bdb). (Entered: 03/31/2015)
04/01/2015	145		ORDER granting 144 Consent Motion For Extension Of Time To Depose Phyllis A. Huster and To Oppose Plaintiff's Motion To Disqualify, and ORDERS that the time in which Ms. Huster must make herself available for deposition be extended through and including April 17, 2015 and the time in which Defendants must file their Response be extended through and including April 29, 2015. Signed by Judge Eleanor L. Ross on 4/1/2015. (bdb) (Entered: 04/01/2015)
04/02/2015			Submission of 137 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 133 Joint MOTION to Dismiss , 135 Amended MOTION to Dismiss , 134 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 136 MOTION to Dismiss. Submitted to District Judge Eleanor L. Ross. (bdb) (Entered: 04/02/2015)
04/02/2015	146		MOTION for Extension of Time File Response re: 136 MOTION to Dismiss , 137 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 133 Joint MOTION to Dismiss , 135 Amended MOTION to Dismiss , 134 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM with Brief In Support by Phyllis A Huster. (Attachments: # 1 Text of Proposed Order)(Thorpe, Charlena) (Entered: 04/02/2015)
04/06/2015	147		RESPONSE in Opposition re 137 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Phyllis A Huster. (Thorpe, Charlena) (Entered: 04/06/2015)
04/06/2015	148		RESPONSE in Opposition re 134 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Phyllis A Huster. (Thorpe, Charlena) (Entered: 04/06/2015)
04/06/2015	149		RESPONSE in Opposition re 135 Amended MOTION to Dismiss filed by Phyllis A Huster. (Thorpe, Charlena) (Entered: 04/07/2015)
04/07/2015	150		RESPONSE in Opposition re 136 MOTION to Dismiss filed by Phyllis A Huster. (Thorpe, Charlena) (Entered: 04/07/2015)
04/07/2015	151		SUPPLEMENTAL RESPONSE by Phyllis A Huster re 149 Response in

			Opposition to 135 Joint Motion to Dismiss (Thorpe, Charlena) Modified to accurately reflect entry on 4/7/2015 (bdb). (Entered: 04/07/2015)
04/23/2015	152		RESPONSE in Support re 136 MOTION to Dismiss filed by Acacia Patent Acquisition LLC. (Gresham, Dan) (Entered: 04/23/2015)
04/23/2015	153		RESPONSE in Support re 134 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by J2 Global Communications, Inc.. (Gresham, Dan) (Entered: 04/23/2015)
04/23/2015	154		REPLY to Response to Motion re 137 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Charles R Bobo, II. (Schoenthaler, Peter) (Entered: 04/23/2015)
04/23/2015	155		RESPONSE in Support re 135 Amended MOTION to Dismiss filed by Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., Charles R Bobo, II, J2 Global Communications, Inc., Unified Messaging Solutions, LLC. (Attachments: # 1 Exhibit Johnson Declaration, # 2 Exhibit A to Johnson Declaration, # 3 Exhibit B to Johnson Declaration, # 4 Exhibit C to Johnson Declaration, # 5 Exhibit D to Johnson Declaration, # 6 Exhibit E to Johnson Declaration, # 7 Exhibit F to Johnson Declaration, # 8 Exhibit G to Johnson Declaration, # 9 Statement of Material Facts H to Johnson Declaration)(Gresham, Dan) (Entered: 04/23/2015)
04/27/2015			Submission of 146 MOTION for Extension of Time File Response re: 136 MOTION to Dismiss , 137 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 133 Joint MOTION to Dismiss , 135 Amended MOTION to Dismiss , 134 MOTION TO DISMISS. Submitted to District Judge Eleanor L. Ross. (bdb) (Entered: 04/27/2015)
04/29/2015	156		RESPONSE in Opposition re 131 Emergency MOTION to Disqualify Attorney *Thomas Horstemeyer; Sullivan &Cromwell, LLP; InnovaLaw, LLC; Nelson Bumgardner Casto PC; Arnstein &Lehr; and Strading Yocca Carlson &Rauth* filed by Acacia Patent Acquisition LLC. (Gresham, Dan) (Entered: 04/29/2015)
04/29/2015	157		RESPONSE in Opposition re 131 Emergency MOTION to Disqualify Attorney *Thomas Horstemeyer; Sullivan &Cromwell, LLP; InnovaLaw, LLC; Nelson Bumgardner Casto PC; Arnstein &Lehr; and Strading Yocca Carlson &Rauth* filed by Unified Messaging Solutions, LLC. (Gresham, Dan) (Entered: 04/29/2015)
04/29/2015	158		RESPONSE re 131 Emergency MOTION to Disqualify Attorney *Thomas Horstemeyer; Sullivan &Cromwell, LLP; InnovaLaw, LLC; Nelson Bumgardner Casto PC; Arnstein &Lehr; and Strading Yocca Carlson &Rauth* filed by Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., J2 Global Communications, Inc., Unified Messaging Solutions, LLC. (Attachments: # 1 Exhibit Declaration of George Thomas, # 2 Exhibit Declaration of Michael Stephens, # 3 Exhibit Declaration of Edward Johnson, # 4 Exhibit 1 to Johnson Declaration, # 5 Exhibit 2 to Johnson Declaration, # 6 Exhibit 3 to Johnson Declaration, # 7 Exhibit 4 to Johnson Declaration, # 8 Exhibit 5 to Johnson Declaration, # 9 Exhibit 6 to Johnson Declaration, # 10 Exhibit 7 to Johnson Declaration, # 11 Exhibit 8 to Johnson Declaration, # 12 Exhibit 9 to Johnson Declaration, # 13 Exhibit 10 to Johnson Declaration)(Gresham, Dan) (Entered: 04/29/2015)

04/29/2015	159		NOTICE Of Filing Additional Exhibits by Acacia Patent Acquisition LLC, Advanced Messaging Technologies, Inc., J2 Global Communications, Inc., Unified Messaging Solutions, LLC re 158 Response to Motion,,, (Attachments: # 1 Exhibit 11 to Johnson Declaration, # 2 Exhibit 12 to Johnson Declaration, # 3 Exhibit 13 to Johnson Declaration, # 4 Exhibit 14 to Johnson Declaration, # 5 Exhibit 15 to Johnson Declaration, # 6 Exhibit 16 to Johnson Declaration, # 7 Exhibit 17 to Johnson Declaration, # 8 Exhibit 18 to Johnson Declaration, # 9 Exhibit 19 to Johnson Declaration, # 10 Exhibit 20 to Johnson Declaration, # 11 Exhibit 21 to Johnson Declaration, # 12 Exhibit 22 to Johnson Declaration, # 13 Exhibit 23 to Johnson Declaration, # 14 Exhibit 24 to Johnson Declaration, # 15 Exhibit 25 to Johnson Declaration, # 16 Exhibit 26 to Johnson Declaration Part 1, # 17 Exhibit to Johnson Declaration Part 2, # 18 Exhibit 27 to Johnson Declaration)(Gresham, Dan) (Entered: 04/29/2015)
04/29/2015	160		RESPONSE in Opposition re 131 Emergency MOTION to Disqualify Attorney *Thomas Horstemeyer; Sullivan &Cromwell, LLP; InnovaLaw, LLC; Nelson Bumgardner Casto PC; Arnstein &Lehr; and Strading Yocca Carlson &Rauth* filed by Advanced Messaging Technologies, Inc., J2 Global Communications, Inc.. (Gresham, Dan) (Entered: 04/29/2015)
05/05/2015	161		NOTICE of Joinder by Charles R Bobo, II re 160 Response in Opposition to Motion to Plaintiff's 131 Emergency Motion to Disqualify (Schoenthaler, Peter) Modified to accurately reflect entry on 5/6/2015 (bdb). (Entered: 05/05/2015)
05/13/2015	162		REPLY BRIEF re 131 Emergency MOTION to Disqualify Attorney *Thomas Horstemeyer; Sullivan &Cromwell, LLP; InnovaLaw, LLC; Nelson Bumgardner Casto PC; Arnstein &Lehr; and Strading Yocca Carlson &Rauth* filed by Phyllis A Huster. (Attachments: # 1 Exhibit A − Beard Deposition, # 2 Exhibit B − Huster Deposition)(Thorpe, Charlena) (Entered: 05/13/2015)
05/21/2015			Submission of 131 Emergency MOTION to Disqualify Attorney *Thomas Horstemeyer; Sullivan &Cromwell, LLP; InnovaLaw, LLC; Nelson Bumgardner Casto PC; Arnstein &Lehr; and Strading Yocca Carlson &Rauth*. Submitted to District Judge Eleanor L. Ross. (bdb) (Entered: 05/21/2015)
11/05/2015	163		ORDER denying 131 Emergency Motion to Disqualify Attorney. Signed by Judge Eleanor L. Ross on 11/05/15. (fap) (Entered: 11/05/2015)
11/12/2015	164		ORDER denying as moot 133 Defendants' Joint Motion to Dismiss. Denying as moot 134 Defendant j2 Global Communications' Motion to Dismiss for Failure to State a Claim. Granting in part 135 Defendants' Amended Joint Motion to Dismiss and DISMISSES Counts I, VII and IX as to all Defendants. The Court further DISMISSES Counts II, III, IV, V, VI, and VIII as they pertain to Defendants j2 Global Communication, Inc.; Advanced Messaging Technologies, Inc.; Unified Messaging Solutions, LLC; and Acacia Patent Acquisition LLC. These counts remain as to Defendant Bobo. The Clerk is DIRECTED to TERMINATE Defendants j2 Global Communication, Inc.; Advanced Messaging Technologies, Inc.; Unified Messaging Solutions, LLC and Acacia Patent Acquisition LLC as parties to this action as no claims remain against them. Denying as moot 136

			Defendant Acacia Patent Acquisition's Motion to Dismiss. Granting 146 Plaintiff's Motion for Extension of Time to Response. As to the remainder of the Amended Joint Motion to Dismiss 135 and Defendant Bobo's Motion to Dismiss 137 , the Court NOTIFIES the parties of its intent to convert these motions into motions for summary judgment. The parties shall have TWENTY−ONE (21) DAYS to supplement the record with briefing and exhibits pertinent to the issue of the statute of limitations defenses. Signed by Judge Eleanor L. Ross on 11/12/2015. (bdb) (Entered: 11/13/2015)
11/16/2015	165		NOTICE of Appearance by Bryan L. Baysinger on behalf of Charles R Bobo, II (Baysinger, Bryan) (Entered: 11/16/2015)
11/24/2015	166		Consent MOTION for Extension of Time File a Response to Order 164 for Supplemental Briefing and Exhibits by Charles R Bobo, II. (Attachments: # 1 Text of Proposed Order Proposed Order)(Baysinger, Bryan) Modified to accurately reflect entry on 11/25/2015 (bdb). (Entered: 11/24/2015)
11/25/2015	167		ORDER granting 166 Consent Motion for Extension of Time re 164 Order to File Supplemental Briefing and Exhibits to 12/14/2015. Signed by Judge Eleanor L. Ross on 11/25/2015. (bdb) (Entered: 11/25/2015)
12/14/2015	168		RESPONSE re 164 Order and 167 Order *Supplemental Briefing in Support of Summary Judgment* filed by Charles R Bobo, II. (Baysinger, Bryan) Modified on 12/15/2015 (bdb). (Entered: 12/14/2015)
12/14/2015	169		RESPONSE re 164 Order filed by Phyllis A Huster. (Attachments: # 1 Affidavit Huster Declaration)(Thorpe, Charlena) Modified on 12/15/2015 (bdb). (Entered: 12/14/2015)
12/16/2015			Submission of 164 Order and Briefs. Submitted to District Judge Eleanor L. Ross. (bdb) (Entered: 12/16/2015)
01/28/2016	170	26	ORDER GRANTING Defendant's 135 and 137 Motions to Dismiss, which have been converted to Motions for Summary Judgment and DIRECTING the Clerk to close this case.Signed by Judge Eleanor L. Ross on 1/28/16. (kdw) (Entered: 01/28/2016)
01/28/2016	171	41	CLERK'S JUDGMENT in favor of Defendants against Plaintiff for costs of this action. This action is DISMISSED. (kdw)−−Please refer to http://www.ca11.uscourts.gov to obtain an appeals jurisdiction checklist−− (Entered: 01/28/2016)
01/28/2016			Civil Case Terminated. (kdw) (Entered: 01/28/2016)
01/28/2016	172		AO Form 120 forwarded to Director of USPTO. (kdw) (Entered: 01/28/2016)
02/03/2016	173		BILL OF COSTS by Unified Messaging Solutions, LLC. (Attachments: # 1 Declaration of Edward R. Nelson III in Support of Defendant Unified Messaging Solutions LLC's Bill of Costs, # 2 Exhibit A to Declaration)(Nelson, Edward) (Entered: 02/03/2016)
02/04/2016	174		BILL OF COSTS by Acacia Patent Acquisition LLC. (Attachments: # 1 Declaration of S Brooks, # 2 Exhibit A to Declaration, # 3 Exhibit B to Declaration, # 4 Exhibit C to Declaration, # 5 Exhibit D to Declaration, # 6 Exhibit E to Declaration)(Roberts, Wesley) (Entered: 02/04/2016)

02/12/2016	175		BILL OF COSTS by J2 Global Communications, Inc.. (Attachments: # 1 Affidavit Declaration of Wesley A. Roberts, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C)(Roberts, Wesley) (Entered: 02/12/2016)
02/22/2016	176		Costs Taxed in amount of $ $300.00 against Phyllis A. Huster as to Unified Messaging Solutions, LLC. (kdw) Modified on 2/22/2016 to edit text (kdw). (Entered: 02/22/2016)
02/22/2016	177		Costs Taxed in amount of $ $2,479.02 against Phyllis A. Huster as to Acacia Patent Acquisition LLC. (kdw) (Entered: 02/22/2016)
02/26/2016	178	42	NOTICE OF APPEAL as to 170 Order on Motion for Summary Judgment, 164 Order on Motion to Dismiss, Order on Motion to Dismiss for Failure to State a Claim,,, Order on Motion for Extension of Time,,,,,,,,,,,,,,,,,,,,,,, 163 Order on Motion to Disqualify Attorney, 171 Clerk's Judgment by Phyllis A Huster. Filing fee $ 505, receipt number 113E−6314043. Transcript Order Form due on 3/11/2016 (Thorpe, Charlena) (Entered: 02/26/2016)
02/29/2016	180	44	NOTICE Of Filing Appeal Transmission Letter by Phyllis A. Huster re: 178 Notice of Appeal. (kac) (Entered: 02/29/2016)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

PHYLLIS A. HUSTER,	*	
	*	
Plaintiff,	*	
	*	
v.	*	1:14-CV-03304-ELR
	*	
J2 GLOBAL COMMUNICATIONS, INC.; ADVANCED MESSAGING TECHNOLOGIES, INC.; UNIFIED MESSAGING SOLUTIONS, LLC; ACACIA PATENT ACQUISITION, LLC; and CHARLES R. BOBO, II,	* * * * * *	
	*	
Defendants.	*	
	*	

O R D E R

On November 12, 2015, this Court resolved several pending motions to dismiss, leaving only claims against Defendant Charles R. Bobo. Because Bobo presented evidence outside the pleadings, the Court notified the parties of its intent to convert the remainder of the motions to dismiss (Doc. Nos. 135 & 137) into motions for summary judgment. The parties filed supplemental briefing, and the motions are now ripe for the Court's consideration.

I. BACKGROUND

The facts supporting each cause of action began roughly two decades ago, when Defendant Bobo and Plaintiff began working together for Bobo's company, NetOffice, Inc. ("NetOffice"). (Doc. No. 158-4 (agreement between Bobo and Plaintiff whereby Plaintiff agreed to work as a full time employee of NetOffice in exchange for 30 percent ownership in the company).) On January 4, 1995, Bobo and Huster met with Geoff Sutcliffe, a patent attorney, to discuss matters related to intellectual property. Mr. Sutcliffe filed a patent application on April 28, 1995, which listed Bobo as the sole inventor. (Doc. No. 158-8.) Plaintiff maintains, however, that the April 1995 patent was based on her ideas and handwritten drawings. Accordingly, Plaintiff brought the instant suit to correct inventorship of the April 1995 patent, as well as eight others purportedly based on her designs and conceptions. Plaintiff resigned from NetOffice in February 1996 pursuant to a signed agreement between herself and Bobo. (Doc. No. 159-2.)

Originally, Plaintiff asserted nine causes of action against five Defendants. All Defendants joined in a collective motion to dismiss. (Doc. No. 135.) Defendant Bobo additionally filed his own motion to dismiss, which addressed claims pertaining to him individually. (Doc. No. 137.) In resolving the motions to dismiss, the Court dismissed (1) the correction of inventorship, conversion, and attorney's fees claims against all Defendants; and (2) the fraudulent concealment, breach of fiduciary duty, unjust enrichment, breach of contract, breach of private duty, and breach of the duty of good faith and fair dealing claims against the four corporate Defendants. Accordingly, Plaintiff's six remaining state law claims against Defendant Bobo are as follows: (1) fraudulent concealment; (2) breach of fiduciary duty; (3) unjust enrichment;[1] (4) breach of contract; (5) breach of private duty; and (6) breach of the duty of good faith and fair dealing.[2] The crux of Plaintiff's argument is that she was unaware that Bobo omitted her name as the inventor of the patents-in-suit.

II. ANALYSIS

In the two motions to dismiss, Bobo asserts a statute of limitations defense as to the state law claims. Plaintiff responds that the statute of limitations was tolled for each claim based on her allegations of fraud.

"Statutes of limitations establish the period of time within which a claimant must bring an action. As a general matter, a statute of limitations begins to run when the cause of action 'accrues'—that is, when 'the plaintiff can file suit and obtain relief.'" Heimeshoff v. Hartford Life & Accident Ins. Co., 134 S. Ct. 604, 610 (2013) (quoting Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal., 522 U.S. 192, 201 (1997)). The Supreme Court "has often

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1 The only claim still pending in the Joint Motion to Dismiss is for unjust enrichment against Defendant Bobo. (Doc. No. 135.) The five other state law claims are addressed in Defendant Bobo's individual motion to dismiss. (Doc. No. 137.)

2 This Court has jurisdiction over these state law claims as Defendant Bobo and Huster are domiciled in different states and the amount in controversy exceeds the statutory minimum.

construed statutes of limitations to commence when the plaintiff is permitted to file suit." Id.; Hoffman v. Ins. Co. of N. Am., 245 S.E.2d 287, 288 (Ga. 1978) ("The statute of limitation begins to run on any given claim on the date the claim accrues in other words, on the date that suit on the claim can first be brought. When the question is raised as to whether an action is barred by a statute of limitations, the true test to determine when the cause of action accrued is to ascertain the time when the plaintiff could first have maintained his action to a successful result." (internal quotations omitted)).

For each of the remaining claims, the parties do not appear to dispute that the applicable statute of limitations is, at most, four years. O.C.G.A. § 9-3-26 (statute of limitations for breach of oral contract is four years); Hendry v. Wells, 650 S.E.2d 338, 343 (Ga. Ct. App. 2007) (statute of limitations for breach of fiduciary duty is four years); Heretyk v. P.M.A. Cemeteries, Inc., 611 S.E.2d 744, 745 n.5 (Ga. Ct. App. 2005) (statute of limitations for unjust enrichment is four years); and Paul v. Destito, 550 S.E.2d 739, 745–46 (Ga. Ct. App. 2001) (statute of limitations for fraud is four years).[3]

Statutes of limitations notwithstanding, O.C.G.A. § 9-3-96 provides: "If the defendant or those under whom he claims are guilty of a fraud by which the

[3] Neither party cites authority for the statute of limitations in breach of private duty and breach of the duty of good faith and fair dealing claims. However, each party appears to agree that the applicable statute of limitations is four years. Because the Court finds that Huster knew of her potential causes of action in the mid-1990's, it is clear that her claims fall well outside any applicable statutes of limitation.

plaintiff has been debarred or deterred from bringing an action, the period of limitation shall run only from the time of the plaintiff's discovery of the fraud." This tolling provision requires proof of three elements:

> (1) actual fraud on the part of the defendant involving moral turpitude, (2) which conceals the existence of a cause of action from the plaintiff, and (3) plaintiff's reasonable diligence in discovering his cause of action despite his failure to do so within the time of the applicable statute of limitations.

Garland v. Advanced Med. Fund, L.P. II, 86 F. Supp. 2d 1195, 1207 (N.D. Ga. 2000) (internal quotations omitted).

A. Actual Fraud Involving Moral Turpitude

Plaintiff's allegations of fraud stem from the fact that Bobo failed to inform her that he left her name off of the patent applications. Such an omission does not rise to the level of actual fraud involving moral turpitude, as "mere silence does not toll the statute of limitation by debarring the plaintiff from bringing [her] action." Brooks v. Freeport Kaolin Co., 324 S.E.2d 170, 172 (Ga. 1985). However, "[i]n cases of a confidential relationship, silence when one should speak, or failure to disclose what ought to be disclosed, is as much a fraud in law as is an actual false representation." Goldston v. Bank of Am. Corp., 577 S.E.2d 864, 868 (Ga. Ct. App. 2003) (internal quotations and alterations omitted). Georgia law further provides:

> Any relationship shall be deemed confidential, whether arising from nature, created by law, or resulting from contracts, where one party is

> so situated as to exercise a controlling influence over the will, conduct, and interest of another or where, from a similar relationship of mutual confidence, the law requires the utmost good faith, such as the relationship between partners, principal and agent, etc.

O.C.G.A. § 23-2-58. Examples of confidential relationships recognized by Georgia courts include (1) employer and employee; (2) partners; (3) clergyman and church member; and (4) principal and agent. Garland, 86 F. Supp. 2d at 1208–09 (listing cases).

Here, Plaintiff has set forth sufficient evidence to create an issue of fact as to whether she and Bobo were in a confidential relationship as shareholders. She has not, however, presented any evidence regarding Bobo's *intent* to defraud her. See Hunter Maclean, Exley & Dunn, P.C. v. Frame, 507 S.E.2d 411, 413 (Ga. 1998) ("In such cases, before the running of the limitation period will toll, it must be shown that the defendant concealed information by an intentional act—something more than a mere failure, with fraudulent intent, to disclose such conduct, unless there is on the . . . existence between the parties of a confidential relationship." (internal quotations omitted)). Even assuming Plaintiff could show, under the lessened standard, that Bobo intended to defraud her by remaining silent, the Court finds the other two elements prove fatal to Plaintiff's claims.

B. Knowledge of the Causes of Action

Next, to toll the statutes of limitations, "the fraud must conceal the existence of the cause of action from the plaintiff, thereby debarring or deterring the knowing of the cause of action." Charter Peachford Behavioral Health Sys. v. Kohout, 504 S.E.2d 514, 522 (Ga. Ct. App. 1998). "The key element for such tolling to apply is that the fraud must have debarred or deterred plaintiff from bringing the suit timely. The fraud must conceal the cause of action and cut plaintiff off from suing, preclude h[er], hinder h[er], shut h[er] out, or exclude h[er] to debar h[er] from bringing suit for purposes of suspension of the running of the statute of limitation." Id. at 522 (internal citation omitted).

Defendant presents a great deal of evidence showing that Plaintiff was aware of the disputed patent as early as 1996.

In terms of Huster's testimony, Defendant relies on three statements made during an April 2014 deposition. First, Huster testified that, in February 1996, she was aware that a patent application was being processed:

> Q: As of February of 1996, when you left, was it your understanding the application was still pending?
>
> A: What do you mean by the word pending? I don't know what you mean by that.
>
> Q: Did you understand that there was still an application for the patent that was being processed?
>
> A: Yes.

(Huster Dep. I at 243:9–16, Doc. No. 155-2.) Huster claims, in one paragraph of a declaration filed with her supplemental briefing, that she believed the question to mean that she understood an attorney was working on a patent application, not that an application was being processed by the United States Patent Office. (Huster Decl. ¶ 1, Doc. No. 169-1.) This is a distinction without a difference. In either case, Plaintiff was plainly aware that a patent application was being prepared sufficient to indicate that her rights may be involved.

Furthermore, Plaintiff testified that her former attorney, Luba Czura, raised the patent as an issue that needed to be resolved:

> Q: And after you left [NetOffice in 1996], you hired two different lawyers to pursue claims against Mr. Bobo, right?
>
> A: Yes.
>
> Q: And did one or both of those lawyers bring up the patent as an issue that needed to be resolved?
>
> A: Yes. Luba Czura brought it up.

(Huster Dep. I at 243:17–22.) During Huster's unrelated litigation with Bobo, Huster and her attorney, Luba Czura, created a bullet list of Huster's contributions to NetOffice. (Id. at 260:3–15 (referred to as "Exhibit ZZZ").) The bullet list was dated May 6, 1996. (Id. at 4:21.) Huster testified that, although the patent was not originally included in the bullet list, Luba Czura did send something to Bobo and his attorney regarding Huster's contribution to the patent. (Id. at 260:16–261:19.) The purpose of the list was "to create a record that [her] contributions to NetOffice warranted the payment that [she was] seeking." (Id. at 261:8–11.) Plaintiff makes no mention of this testimony in her supplemental response.

Within Exhibit ZZZ, there is also a reference to the fact that Huster did not sign an employment agreement "because she incessantly requested Mr. Bobo to assign the patent over to NetOffice." (Id. at 262:9–17.) Plaintiff explained that Luba Czura added this reference

> because I didn't want to talk about the patent. I was afraid—I thought I had rights to the patent potentially. And I was afraid of talking about it with Charles [Bobo], that it would like stir the hornet's nest, but she wanted to put it in there. So I very much remember, she—her adding that.

(Id. at 262:21–263:3.) Later in the deposition, Huster testified that she "believed [she] had a right in the patent application" at the time the bullet list was sent to NetOffice. (Id. at 265:3–17.)

Huster's only attempt at rebutting her own testimony is to state, without citation, that "it is well known that one can assign rights to a patent or patent application before a patent application is filed or a patent is issued." (Doc. No. 169 at 2.) Additionally, Plaintiff emphasizes that, in her deposition, she testified that the first she learned that a patent application had been filed was in 2010. (Huster Dep. II at 90:16–19.) However, Huster has failed to rebut her testimony that she believed she had rights to the patent in 1996.

Next, Defendant cites to a number of documents sent to and from Huster in the mid-1990's to demonstrate that she was aware of the patent:

- A letter dated June 8, 1995, from Mr. Sutcliffe to Huster, with the subject line addressing a patent filed April 28, 1995 (Doc. No. 155-4);

- A fax dated October 23, 1995, from Mr. Sutcliffe to Huster, attaching a draft assignment of the patent application from Bobo to NetOffice. (Doc. No. 155-5);

As it pertains to these documents, Huster maintains that she never received them. (Doc. No. 169 at 2 (citing Huster Dep. II at 151:20–24 & 176:3–13).)

- A fax dated November 20, 1995, from Huster to Mr. Sutcliffe, with an attached letter detailing that another company was infringing on the patent filed in April (Doc. No. 155-7);

- A fax dated December 6, 1995, from Huster to Mr. Sutcliffe, including an expedite form, a phone conversation with the patent office, and a claim comparison (Doc. No. 155-8).

As to these documents, Huster alleges, in conclusory fashion, that she "believes that the documents are fabricated." (Doc. No. 169 at 3.) Such a contention, she argues, is not difficult to believe because this Court previously denied Bobo's motion to dismiss for failure to state a claim. (Id.)

While addressing the motions to dismiss, the Court passed no judgment on Plaintiff's likelihood of success. Rather, the Court accepted as true all factual allegations in the complaint and made a determination as to whether, if proven, Plaintiff could state a claim. The Court's ruling cannot be used as support on a motion for summary judgment. Because Defendant presented sufficient evidence that the statutes of limitations have run, the onus is now on Plaintiff to "come forward with some evidence to demonstrate on motion for summary judgment that some evidence exists to create a material issue of fact that the statute has been tolled for jury determination." Douglas Kohoutek, Ltd. v. Hartley, Rowe & Fowler, P.C., 543 S.E.2d 406, 407 (Ga. Ct. App. 2000); Royal v. N.Y. Life Ins. Co., No. 6:10-cv-104, 2015 WL 339781, at *24 (S.D. Ga. Jan. 26, 2015). This she has not done.

Indeed, even accepting each of her challenges to the documentary evidence, there is sufficient evidence on the record to establish as a matter of law that Defendant's omissions did not "debar or deter" Huster from bringing suit.[4] Looking to Huster's sworn deposition testimony, it is clear that Huster, while perhaps not well versed on patent law, was fully aware that she had rights in the patent in 1996. She testified that she "thought [she] had rights to the patent potentially" but avoided asserting those rights because she "was afraid of talking about it with [Bobo.]" (Huster Dep. I at 262:24–25; see also id. at 265:15–17 (responding in the affirmative to the question "[Y]ou believed you had a right in the patent application at that point, correct?").)

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[4] By making such an assumption, the Court in no way accepts Plaintiff's allegations of forgery as fact. Plaintiff's accusation is entirely speculative based on her testimony that she could not recall if she authored a couple of documents. (See Huster Dep. II at 170:1–171:9.) The Court simply demonstrates that any dispute as to the authenticity of these documents is immaterial, as there is ample evidence not in dispute to support Huster's knowledge of her rights in the patent.

Finally, the Court turns to a document authored by Huster.[5] In that document, Huster has created a chart cataloging evidence in her case, as well as a "Timeline of Invention." In this document, Huster references a letter to attorney Chuck Beaudrot dated June 7, 1997. (Doc. No. 159-7 at 12.) In her notes regarding this letter, Huster writes "original patent filed under Charles Bobo but the lawfirm paid by NetOffice, Inc." (Id.)

Therefore, the Court finds that it was not an omission or fraud on the part of Bobo that led Huster to sit on her claims. See Columbia Cty. v. Branton, 695 S.E.2d 674, 678 (Ga. Ct. App. 2010) (finding that the plaintiff failed to meet his burden to establish tolling because he "was aware of the facts that he contend[ed] gave rise to his claims despite the county defendants' alleged fraud"). Rather, Huster (1) was aware that a patent application was being processed; (2) was aware that she had rights to the patent; and (3) testified that she did not pursue her rights because she was afraid of Bobo.

Nor is the Court persuaded that Plaintiff's alleged confidential relationship would excuse any knowledge of her rights in the patent. The Georgia Supreme Court has dismissed such an argument. Hunter Maclean, Exley & Dunn, 507 S.E.2d at 415 ("Under the inaccurate reasoning that a confidential relationship alone is sufficient to toll the limitations period in malpractice cases, the statute would be tolled indefinitely, so long as the confidential relationship continued—even if the plaintiff was fully aware of the facts underlying his allegation of malpractice, but merely slept on his right to bring suit.”). Moreover, any confidential relationship that existed at the time of the alleged omission clearly dissipated in a matter of months. The Court thus finds that Plaintiff’s knowledge of her cause of action entitles Defendant Bobo to summary judgment.

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[5] In briefing for a previously ruled upon Emergency Motion for Disqualification, Defendants referenced this document as one created by Huster. Huster did not challenge the authenticity of this document. Throughout the document, Huster uses the first person to describe a number of issues with NetOffice. (See Doc. No. 159-7 at 7.)

C. Reasonable Diligence

Defendant finally argues that Huster has failed to demonstrate that she acted with reasonable diligence to discover the cause of action. In support, Defendant cites Huster’s deposition testimony that she considers herself an Internet guru and that she was aware how to find patents on the Internet through simple searches. (Huster Dep. II at 33:25-34:7 & 84:22-85:5, Doc. No. 155-3.) Failure to conduct any such searches in the fifteen years after she knew the patents were being processed, Defendant argues, cannot constitute reasonable diligence. Plaintiff argues that she trusted Bobo to inform her of any filings regarding the patent. (Doc. No. 147 at 7.) Stated differently, she contends that the confidential relationship that allegedly existed relieved her of any obligation to discover her cause of action.

Similar to the standards noted above, "[t]he failure to use reasonable diligence may be excused . . . where there exists some relation of trust and confidence between the party committing the fraud and the party who is affected by it." Garland, 86 F. Supp. 2d at 1208 (internal quotations and alterations omitted). However, a confidential relationship merely lessens any duty of diligence. It does not negate the requirement altogether. Godwin v. Mizpah Farms, LLLP, 766 S.E.2d 497, 506 (Ga. Ct. App. 2014) (a confidential relationship "affects *only the extent of* . . . the plaintiff's corresponding obligation to discover the fraud for herself" (internal quotations omitted and emphasis added)).

In the face of Defendant's evidence (i.e., Plaintiff's own testimony) that she previously used simple Internet searches to research patent filings, Plaintiff has presented absolutely no evidence of diligence on her part in discovering her cause of action, even if considered under the lessened standard.

Moreover, and despite Huster's argument to the contrary, the facts show that Plaintiff did not trust Bobo as early as June 8, 1995, which was just a month and a half after the patent application was filed. (Huster Dep. I at 155:13 & 156:6–9.) Indeed, Huster repeatedly testified about how she did not trust Bobo. On these facts, Huster certainly would have been under an obligation to exercise *some* degree of diligence in discovering her cause of action. Plaintiff has not referenced any case holding that the confidential relationship shall continue in perpetuity, particularly where the evidence clearly demonstrates that the plaintiff no longer trusted the defendant. Accordingly, the Court finds that Plaintiff has also failed to demonstrate that she acted with any degree of diligence, as is required to toll the statutes of limitations.

Based on the foregoing, the Court concludes that the applicable statutes of limitations bar all of Plaintiff's remaining claims against the sole remaining Defendant in this action. Further, the Court concludes that Plaintiff has failed to meet her burden of proving that fraud exists sufficient to toll the statutes of limitations.

III. CONCLUSION

The Court **GRANTS** Defendant's Motions to Dismiss (Doc. Nos. 135 & 137), which have been converted to Motions for Summary Judgment. The Court **DIRECTS** the Clerk to **CLOSE** this case.

SO ORDERED, this 28th day of January, 2016.

ELEANOR L. ROSS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PHYLLIS A. HUSTER, Plaintiffs, v. J2 GLOBAL COMMUNICATIONS, INC.; ADVANCED MESSAGING TECHNOLOGIES, INC.; UNIFIED MESSAGING SOLUTIONS, LLC; ACACIA PATENT ACQUISITION, LLC; and CHARLES R. BOBO, II, Defendant.	CIVIL ACTION FILE NO. 1:14-cv-03304-ELR

J U D G M E N T

This action having come before the court, the Honorable Eleanor L. Ross, United States District Judge for consideration of the Defendants' Motions to Dismiss. The Defendants' Amended Joint Motion to Dismiss was granted in part as to Defendants J2 Global Communication, Inc., Advanced Messaging Technologies, Inc., Unified Messaging Solutions, LLC, and Acacia Patent Acquisition LLC. The remainder of the Defendants' Amended Joint Motion to Dismiss and Defendant Charles R. Bobo, II's Motion to Dismiss were converted to Motions for Summary Judgment as to defendant Charles R. Bobo, II, and granted. Therefore, it is

Ordered and Adjudged that Plaintiff take nothing and the Defendants recover their costs of defending this action. This action is hereby **DISMISSED**.

Dated at Atlanta, Georgia this 28th day of January, 2016.

JAMES N. HATTEN
CLERK OF COURT

By: s/Kayla Washington
Deputy Clerk

Prepared, Filed and Entered
In the Clerk's Office
January 28, 2016
James N. Hatten
Clerk of Court

By: s/Kayla Washington
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

Phyllis A. Huster Plaintiff, vs. J2 Global Communication, Inc., Advanced Messaging Technologies, Inc., Unified Messaging Solutions, LLC, Acacia Patent Acquisition LLC, and Charles R. Bobo II. Defendants.	)	Civil No.: 1:14-CV-03304-ELR

NOTICE OF APPEAL

Notice is hereby given that Plaintiff, Phyllis A. Huster, in the above named case hereby appeals to the United States Court of Appeals for the Federal Circuit from the final judgment (ECF. No. 171) entered in this action on January 28, 2016, in favor of all Defendants, J2 Global Communication, Inc., Advanced Messaging Technologies, Inc., Unified Messaging Solutions, LLC, Acacia Patent Acquisition LLC, and Charles R. Bobo II, the orders (i.e., ECF Nos. 164 and 170) granting Defendants' Motions to Dismiss (ECF. Nos. 135 and 137), and the order (ECF. No. 163) denying Plaintiff's Emergency Motion to Disqualify (ECF No. 131).

Submitted this 26th day of February, 2016.

/s/ Charlena Thorpe
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NORTHERN DISTRICT OF GEORGIA

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JAMES N. HATTEN
DISTRICT COURT EXECUTIVE
AND CLERK OF COURT

DOCKETING SECTION
404-215-1655

February 29, 2016

Jan Horbaly
Circuit Executive & Clerk of Court
U.S. Court of Appeals, Eleventh Circuit
717 Madison Place, N.W.
Room 401
Washington, D.C. 20439

U.S.D.C. No.: 1:14-cv-3304-ELR
U.S.C.A. No.: 00-00000-00
In re: ***Phyllis A. Huster v. J2Global Communications, Inc., et al.***

Enclosed are documents regarding an appeal in this matter. Please acknowledge receipt on the enclosed copy of this letter.

X **Certified copies of the Notice of Appeal, Docket Sheet, Clerk's Judgment and Order appealed enclosed.**

_____ This is not the first notice of appeal. Other notices were filed on: .

X **There is no transcript.**

_____ The court reporter is .

_____ There is sealed material as described below: .

_____ Other: .

X **Fee paid on 2/26/16; Receipt Number 113E-6314043.**

_____ Appellant has been leave to file *in forma pauperis*.

_____ This is a bankruptcy appeal. The Bankruptcy Judge is .

_____ The Magistrate Judge is .

X **The United States District Judge is Eleanor L. Ross.**

_____ This is a **DEATH PENALTY** appeal.

Sincerely,

James N. Hatten
District Court Executive
and Clerk of Court

By: /s/ Kimberly Carter
Deputy Clerk

Enclosures